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ABSTRACT

This manual is designed for California Teachers Association (CTA) members who are serving on Certificated Employees Councils (CEC) or chapter negotiating teams. It concentrates almost entirely on the organization, role, and function of the CEC or negotiating team and describes a system of collective negotiations. The sections of the manual are: Introduction; The Certificated Employees Council; Organization of the CEC; Duties of CEC Officers; Authority to Negotiate; Negotiation Reports; Attitudes Speak Louder Than Words; Selection of CEC Members; Further Notes on Selection; The Work of the Certificated Employee Council (When to Negotiate, Source of Proposals for CEC Negotiations, Planning and Training, Know Your School Board, School Board Negotiating Teams, Ground Rules, Organization of Negotiating Team, Recording, Negotiating Salary and Fringe Benefits, General Negotiating Tips, Impasse, and Ratification); and Summary, Conclusion. (DB)

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NEGOTIATIONS HANDBOOK

FOR

CHAPTER LEADERS AND

CERTIFICATED EMPLOYEE COUNCIL MEMBERS

JC 740 379

Prepared by:

CALIFORNIA TEACHERS ASSOCIATION
DEPARTMENT OF PROFESSIONAL NEGOTIATIONS

INTRODUCTION

This manual is designed for CTA Chapter members serving on Certificated Employees Councils or chapter negotiating teams.

The handbook is devoted, almost entirely, to the organization, role and function of the CEC or negotiating team. It describes a system of collective negotiations.

Collective negotiations is different from "collective begging" or "organized supplication." It is a process of proposal and counter-proposal, of give and take, resulting finally in mutual agreement or stalemate.

Negotiations requires some parity or equality of power in order to function properly.

If the employer has no fear -- no concern -- no uncertainty -- about the consequences of failure to reach agreement, it is unlikely that true negotiations will take place. It is the job of chapter leaders -- not the negotiators -- to organize the chapter as a power base.

THE CERTIFICATED EMPLOYEES COUNCIL

The CEC executes policy -- it does not make policy.

It provides a skilled technical service.

It is not a chapter committee.

By law it is the exclusive negotiating agent for all certificated employee organizations except those composed of employees holding "management positions" according to school board classification.

It represents organizations in determining the text of any school board policy, rule, regulation or administrative procedure in which the members have expressed an interest.

It does not represent individual members in personnel problems or grievances.

ORGANIZATION OF THE CEC

The law requires each organization entitled to be represented to select its CEC members by October 31 of each year. The CEC is required to meet prior to November 10 to select a chairman.

NOTE: The CEC selects its own chairman.

It may select other officers. It is recommended that one of the members be named Secretary.

A Treasurer is unnecessary unless there is more than one organization contributing to the costs of operation of the CEC.

DUTIES OF CEC OFFICERS

Chairman: calls internal meetings; sets the agenda, time and place, and presides at internal meetings. He makes the arrangements with the employer representatives regarding time, place and agenda for negotiating sessions as directed by the CEC. He may be, but is not necessarily, the chief spokesman during negotiations.

Secretary: maintains the master file of minutes, correspondence and other written documents sent by or received by the CEC.

AUTHORITY TO NEGOTIATE

The CEC members from the chapter should meet as a team and assume control of the negotiations. It is assumed in all that follows that (1) the chapter is the majority organization with a majority of the CEC members; (2) the chapter is ready, willing and able to assert leadership in representing teachers; (3) the chapter will prepare a comprehensive proposal representative of all the teachers.

The chapter's legislative body approves the proposal to be negotiated and ratified the agreement reached with the employer regarding such proposal.

Having acted to initiate the proposal, the legislative body must delegate to the CEC authority to make the best possible "deal" -- the authority to make counter-proposals and reach satisfactory compromise. The CEC must not be mere message carriers or "errand boys."

The chapter legislative body reserves the right to refuse to ratify any agreement.

NEGOTIATION REPORTS

It is essential that the CEC keep its constituency informed. It should be the responsibility of the chapter leadership to provide the facility for reporting.

All printed or public statements during negotiations may affect progress at the table. The CEC should have the authority to determine the nature, tone and general content of negotiation reports.

Chapter leadership should work closely with CEC so that chapter activities will support, not hinder, negotiations.

ATTITUDES SPEAK LOUDER THAN WORDS

The CEC collectively and individually is an advocate for organization positions.

. . . Only the organization view is expressed. Dissenting personal opinion is entirely out of place at the negotiating table. If you can't advocate the chapter's position, resign.

. . . The CEC represents teachers through their organizations. It is the only legal negotiating agent. Attempts by board representatives to question whether the CEC really represents teachers must be quashed.

. . . It's the professional obligation of teachers to share authority for decision-making. Paternalism must be rejected. Negotiation means shared, bi-lateral decisions instead of authoritarian, unilateral directives. The teacher is not a public servant -- he is a professional person employed by a public agency.

. . . Professional pay for professional responsibilities is a legitimate major objective for teachers. Joining organizations to advance personal welfare and economic status is common practice. Negotiators must not be apologetic in asserting teacher demands for authority and pay commensurate with responsibilities.

. . . Teachers are competent. Negotiators must assert that teachers are competent until proven otherwise. The board has the sole authority to hire -- neither the chapter nor its constituency were responsible for the hiring of any teacher. If the employer alleges lack of competence, it has the obligation of proof. The teacher has the right of due process, and the organization has the obligation to be the teacher's advocate in that process.

SELECTION OF CEC MEMBERS

Appointment by the executive body with ratification by the legislative body of the chapter is recommended. (Sample chapter bylaws provisions are available from the Negotiations Department on request.)

Automatic appointment by virtue of position held in the chapter, or election are not recommended methods of selection.

In addition to the attitudes described in the previous section, traits to be sought or avoided are listed below.

QUALITIES NEEDED:

1. Ability to plan effectively -- this is a key, priority quality
2. Ability to earn respect and confidence of adversary
3. Ability to earn respect and confidence of peers
4. Personal integrity
5. Ability to think clearly under stress
6. Ability to express thoughts verbally and clearly

7. General practical intelligence
8. Open-minded
9. Tact
10. Insight
11. Self-esteem
12. Ability to perceive and exploit power
13. Ability to listen accurately
14. High tolerance for uncertainty and ambiguity
15. Competitiveness -- desire to achieve

QUALITIES TO BE AVOIDED:

1. Belligerency, antagonism
2. "Chip-on-the-shoulder"
3. "Axe-grinder," the personal crusade type
4. "Nit-picker"
5. Cynic
6. Pessimist

FURTHER NOTES ON SELECTION.

Organizations have the legal right to appoint any person as CEC member, whether or not employed by the school district. Any board policy to the contrary is unenforceable. However, it is usually desirable for teachers to negotiate for teachers rather than rely on outside personnel. (Training programs are available on request from CTA offices.)

Multi-year terms for negotiators are recommended, and total replacement annually should be avoided. Negotiating skills can be imparted in training programs. Mastery of the art of negotiating comes from experience. Retain effective negotiators as long as possible through reappointment.

THE WORK OF THE CERTIFICATED EMPLOYEE COUNCIL

WHEN TO NEGOTIATE

Preferably negotiations are initiated when all of the proposals desired by teachers have been assembled into a single, comprehensive package.

The practice of adopting an annual calendar providing for regular weekly, bi-weekly or monthly meetings with the board's representative is not recommended. This often results in meeting simply because a meeting is scheduled -- not because there is a proposal to negotiate. Frustration, exhaustion and bad practices sometimes result.

A package can usually be assembled by February for March initiation of negotiations. Allow 90 to 120 days for negotiation on a comprehensive proposal. Chapter calendars should be planned accordingly.

SOURCE OF PROPOSALS FOR CEC NEGOTIATIONS

Organizations representing certificated personnel (other than persons serving in "management positions" as defined by the school board and state law).

The CEC is a creature of law (Education Code 13085). Organizations are required to exercise their "meet-and-confer" rights only through the CEC. Therefore all organizations must submit their proposals to the CEC.

The CEC will negotiate in response to majority mandate. Therefore, as a practical matter, the proposals emanating from the majority association will constitute the package to be negotiated. There is no legal obligation for the CEC to negotiate proposals from other organizations. There is an implied obligation to consider such proposals on their merits, however, rather than rejecting them out-of-hand. It would be good judgment to refer meritorious proposals to appropriate committees of the majority organization for possible inclusion in the comprehensive package.

Individuals have no legal standing to present proposals to the CEC.

The Board's representative has the right to present proposals at the negotiating table. These should be dealt with either by direct response or by referral to appropriate organization committees for advice.

PLANNING AND TRAINING

Planning should be a major activity and should be properly provided for in the calendar of activities. Planning includes general strategy and tactics, gathering information about the board and its representatives, specific preparation prior to each negotiating session and thorough understanding of all the elements of the comprehensive proposal. Good planning is the secret of success.

Training of negotiators should be scheduled. Contact the nearest CTA office for arrangements. Watch for announcements of conferences and workshops that would be helpful.

KNOW YOUR SCHOOL BOARD

Basic to any consideration of negotiation strategy should be knowledge of your opponent. Just as any good coach scouts the opposing team, so should the negotiating team.

School board power structure and the attitudes, prejudices, pressures and operating logic that underlie the board's approach to negotiations are vital pieces of knowledge for negotiators. The following information is useful:

. . . Age, number of years on board, education
. . . Marital status, number and ages of children, schools attended by children

. . . Organizations he belongs to, community activities, reference groups
. . . . Employment or occupation, union member?, if employer, unionized employees?
. . . Political affiliation
. . . Why did he want to be a board member? What groups supported candidacy?
. . . Which board members does he influence? By whom is he influenced?
. . . What are the voting blocs on the board? What is individual voting record?

Sources of information will include experienced teachers, friends in the community, social gatherings, and the like.

Experienced, skilled observers should attend board meetings regularly and keep records. All information should be assembled in a confidential file.

SCHOOL BOARD NEGOTIATING TEAMS

The board has the same freedom and right as the chapter to appoint its representatives.

Typical: Administrator team (with or without the superintendent), combination of board members and administration, outside professional negotiator.

Most important consideration for the CEC is whether or not the board's representatives have the authority to reach agreement (subject to ratification). This usually boils down to (1) have they met with the board and are they working within buidelines? (2) does the board have sufficient confidence in them to accept their recommendations?

GROUND RULES

Ground rules are advance agreements about procedures. Such rules should be kept to a minimum.

Board representatives frequently push to establish elaborate procedures. Usually the purpose is to defeat negotiation and restrict the association's freedom of action. Certainly devotion of major time and energy to development of lengthy procedures is not productive and should be avoided.

Central to the board's strategy is to secure agreement to a press blackout or agreement not to issue public statements without mutual concurrence. This should be avoided. Do not permit restrictions on the chapter's freedom to communicate either with its membership or with the public.

ORGANIZATION OF NEGOTIATING TEAM

Optimum size is three to five. Where the CEC is seven or nine persons, consideration may be given to formation of two or three teams. Appropriate division of the comprehensive package would be made between the teams.

A negotiating team should have: (1) chief spokesman, (2) recorder responsible for accurate wording of any agreement, accurate wording of disposition of each agenda item, keeping orderly file of such documents, (3) person who records statements which may be used against the opposition later, (4) person noting the "silent language" which indicates reaction of the board's team to CEC actions, (5) "right-hand" person to the chief negotiator -- passes notes, suggests caucus, helps form strategy, acts as extensions of the eyes and ears of the spokesman.

Chief spokesman must have the complete support of the team. He calls the shots and carries the major burden at the table. During a negotiating session team members who feel that a change should be made in tactics or who disagree with what is going on, should request a caucus rather than enter into discussion. Team members participate in table discussion only in accordance with pre-arranged plan or as called upon by the chief spokesman.

RECORDING

Verbatim transcripts -- either by tape recording or secretarial record -- are usually not advised.

Try to avoid the "official" minutes trap. Negotiating sessions are not committee meetings. Agreement on proposals is the major objective and the record of agreements is the major record of negotiating sessions. Each team will keep such records as it desires for its own use.

It is desirable (assuming that an agenda is followed at negotiating sessions) to seek agreement from the other party regarding a statement that accurately describes the disposition of an agenda item before proceeding to the next item. For example: "The transfer policy proposal was not accepted by the board's representative, but there was agreement in principle regarding sections 3 and 5. It was agreed that the board's representative would offer a counter-proposal at the next negotiating session."

The compilation of such statements regarding each agenda item would constitute the "official" record of the meeting.

NEGOTIATING SALARY AND FRINGE BENEFITS

Demand adequate research and supporting documents from the committees.

You need data showing how much money is available. Major conflicts on the data base will need to be resolved if satisfactory agreements are to be reached. Budget analysis and comparison data are available from CTA Budget, Finance and Salary staff.

In initiating the proposal keep rationale and proof to a minimum. Do not over-explain or over-justify your proposal. Graphs and charts are usually a waste of time. Throw the ball to the board's representative to come up with a counter-proposal. The initial proposal should be the largest amount which is defensible.

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Charts, graphs and data may be needed during the course of negotiations to rebut objections raised by the board's representative. Use only when needed, and use only as much as needed to make the point.

Do not revise your proposal until you receive a counter-proposal from the board.

Salary negotiations should be one of the last in the comprehensive proposal because it is the one most likely to be top priority of the membership. Early settlement of the salary issue usually removes member pressure needed for the other items in the proposal.

When agreement appears impossible due to genuine uncertainty about money available, contingency clauses may be the key. Contact CTA negotiations staff for suggested language.

The comparison game is played by both parties. The board's representative seeks a comparison base that makes the district salary schedule look good. The CEC seeks a comparison base that makes the schedule look bad. Agreement with the board's representative on a particular list of districts as a comparison base may be a trap and may restrict the CEC's freedom to use the most advantageous comparison base for salary improvement.

Listen carefully to responses by the board's representative and study any counter-proposals. This gives insight to the direction or objectives sought, e.g., reduction of increments, preparation hurdles for column advancement, change in ratios, etc.

GENERAL NEGOTIATING TIPS

The most important element of success at the table is the unity and commitment of the membership. Negotiator's skills are important. But skilled and militant negotiators cannot compensate for an apathetic membership. Teacher dissatisfaction with the status quo and commitment to the CEC proposals are the major keys to success.

Organizing the chapter to provide the power base is a job for the leadership and chapter as a whole. The CEC cooperates but cannot be expected to do the job itself. CTA staff can provide training for executive boards and faculty representatives in organizational development. Call the nearest CTA office for assistance.

The first negotiating session for the presentation of a new comprehensive proposal usually is devoted to explaining the basic structure and content. Little or no debate, argumentation and negotiation is expected.

Do not modify your proposal at the first session. Do not make modifications until a written counter-proposal is received. Avoid presenting all your documentation and rationale in the initial stages and until receipt of a counter-proposal.

Documentation should be used only when it is necessary to rebut an objection of a board's representative with proof. Limit the data to that necessary to overcome a specific objection -- resist the temptation to unload all your proof.

Whenever possible, negotiate from your document. Prepare counter-proposals incorporating the latest offer from the board's representative (or as much of it as can be used without concession of major substance). In this manner you work from your document to control the form and structure of the proposal.

If the board's representative is obviously stalling, refusing to make counter-proposals and generally not taking the CEC very seriously, it is time to consider escalation of organized teacher pressure. Work with chapter leaders on over-all strategy. Consult CTA staff for assistance.

BEST COPY AVAILABLE

In negotiating each specific provision or subject within the comprehensive proposal:

1. Try to open by selecting the one best reason why it is in the best interest of the school board to consider the proposal. Relating the provision to common objectives held by board and teachers is useful.

2. If the board's representative does not accept the proposal, keep asking "why?" in as many different forms as imagination can conceive. Keep pushing for more information.

3. The use of questions designed to produce "either-or" or limited response may be useful in changing an adverse position.

4. When an objection can be answered by proof, then submit documentation -- but only that which is necessary to make the point.

5. When an objection is charge, allegation, rhetoric, etc., not readily countered with proof or documentation, then respond with countercharge, allege imcompetence and ignorance, use our rhetoric.

6. Keep re-stating the need to negotiate, repeating the organization's position and emphasizing the importance of reaching some agreement whenever the discussions seem to bog down.

7. If the board's representative makes a favorable statement or appears to have agreed with any portion of the proposal, quickly re-state his statement (paraphrasing, where appropriate). This nails down his agreement so that recorders for both sides get it in their notes. Or, if it was merely a statement that we can agree with, it may improve the negotiating atmosphere to note that fact.

8. Re-stating the board's position in your own words with an adverse twist is often useful in getting some movement. For example, the board's representative has proposed a schedule resulting in $2,000 less pay than a district with which we are desiring to establish a comparison. You might say: "I see. What you are saying is that you have $2,000 less pride in your teachers in this community. Is this what you want me to tell our members?"

9. Do not over-sell. When there is agreement on a point, stop. Nail down the agreement. Move on to the next item. Remember -- the objective of negotiation is agreement.

The CEC should be entitled to use consultants whenever it wishes. Any attempt by the board's representative to establish procedures which inhibit CEC use of consultants should be defeated. Sometimes the presence of an outsider, such as a member of the CTA staff, can be a pressure favorable to the CEC.

Caucuses should be called only by the chief spokesman. He will call caucuses when requested, when he wishes to reestablish discipline, when he needs to be assured of unity in response to a board position, when he wants to discuss further strategy and compare notes. Too-frequent caucusing can disturb the pace of negotiations and may signal weakness to the board's representative.

It may be useful to recognize three levels of agreement: (1) agreement in principle, (2) agreement on form, (3) agreement on substance. For example, it would be futile to argue for full pay for sabbatical leave if the board is opposed in principle to granting sabbatical leaves. Earlier it was suggested that initial statements be related to objectives or principles of concern to the board. If this is done successfully, it is more difficult to reject your proposal on principle.

Be persistent. Tenacious but restrained persistence can be difficult for the board to cope with and thus can be very productive.

The "County Counsel" is simply the job title of the school board's attorney. As the board's attorney he is expected to be their advocate. County Counsel opinions should be referred to as opinions of the board's attorney.

A typical ploy of the board's representative is to give the opinion of the County Counsel as though he were reading the Bible. Don't let opposition pull this off. This can be disastrous to negotiation.

Avoid getting hung up on legalisms. If there is a genuine legal question involved, legal counsel is available. Usually the board's representative is hiding behind legal counsel to avoid giving the real reasons why the proposal is being rejected. Ask: "If a court should determine this to be legal, would you agree to the proposal?" (Note that only a court can <u>determine legality</u>.)

<u>IMPASSE</u>

Impasse should be considered only after there has been substantial effort to reach agreement. Do not rely on procedural impasse processes (mediation, fact-finding) to substitute for teacher pressure tactics. There is no substitute for teacher power!

Mediation is the most productive procedural method for impasse resolution. A mediator does not prepare a written report or written recommendations. He simply tries to help the parties reach their own agreement.

If mediation fails, then fact-finding with recommendations may be considered. The title is misleading. The process is really advisory arbitration. The fact-finding team is expected to hold hearings, take testimony and prepare recommendations. It should not be restricted to simply finding or confirming "facts." It may be useful to propose that the fact-finder's report go to the negotiators and be the subject of some negotiating sessions to determine whether the report can be the basis for negotiated agreement before making the report public.

Impasse usually is a crisis period for the chapter. There are a myriad factors involved that affect the selection of strategies and tactics. Not the least of these is the weakness of the Winton Act provisions for impasse resolution. It is beyond the scope of this document to provide an exhaustive treatment of the merits, timing and utilization of mediation and fact-finding.

When the negotiations are approaching impasse -- crisis -- it is suggested that CTA staff consultation be sought.

RATIFICATION

Any agreement reached at the table must be ratified by both parties.

There are many ways to accomplish ratification. These vary from secret-ballot voting to voice or standing vote in a general meeting. The procedure to be followed should be developed and adopted before negotiation sessions begin. This is an important step in allowing teachers to place confidence in their negotiating team.

Ideally ratification process relates to an entire comprehensive agreement (or package of proposals) -- in which case the vote is "accept" or "reject" for the entire document as a single vote.

Ratification is on the final language -- the complete agreement. Avoid seeking ratification on agreements-in-principle.

There should be a clear recommendation from the negotiating team. If the team has agreed to the proposal, then good faith demands that the team work forcefully to seek ratification by the members.

SUMMARY, CONCLUSION

The purpose of this publication is to help CEC's and negotiating teams to get organized and to provide some useful hints for successful negotiation.

Always remember -- there is no substitute for chapter organization and teacher power. Negotiators are basically selling peaceful and amicable personnel relations as the exchange for agreement.

It is not the intent of this handbook to substitute for training conferences. Basic training would include a workshop in "Verbal Skills in Negotiation." This program was developed and copyrighted by the National Education Association. It is conducted for chapter negotiators by CTA staff.

Representation of members is the fundamental purpose of employee organizations. The negotiation process provides the focus for complete mobilization of chapter resources in pursuit of effective representation. Dispute resolution and settlement of crises occurs at the table. Chapter negotiators have an important task in the achievement of chapter objectives.

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